

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP  
ECODIESEL MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION

No. 3:17-md-02777-EMC

**PRETRIAL ORDER NO. 7: RELATING  
TO PRESERVATION OF DOCUMENTS  
AND ELECTRONICALLY STORED  
INFORMATION**

The Honorable Edward M. Chen

**SCOPE OF ORDER**

1. This Order shall govern the preservation of documents and electronically stored information (“ESI”) by FCA US LLC, Fiat Chrysler Automobiles N.V., V.M. Motori S.p.A., VM North America, Inc., Robert Bosch LLC, and Robert Bosch GmbH (“Defendants”), the plaintiffs named in the consolidated class action complaint filed in this action on July 19, 2017 (ECF No. 186 (the “Consolidated Complaint”)), and the United States of America (collectively, the “Parties”).

2. This Order is designed and shall be interpreted to ensure that preservation of Potentially Relevant Information is both effective and proportionate, and that the Parties have greater clarity as to their respective preservation obligations under applicable law, including the Federal Rules of Civil Procedure, especially with respect to Electronically Stored Information (“ESI”), and the measures being undertaken to Preserve Potentially Relevant Information.

**DEFINITIONS**

3. “Information” shall be interpreted broadly to include documents and ESI as those terms are used in Rule 34 of the Federal Rules of Civil Procedure.

4. “Potentially Relevant Information” is Information that a Party knows or has reason to believe is or may likely be relevant to the claims and defenses asserted in this action, and associated relief, including but not limited to:<sup>1</sup>

a. The development, validation and pre-production testing of the emissions control systems evaluated for usage in diesel powered vehicles with respect to the Tier 2 exhaust emission standards of the Environmental Protection Agency (“EPA”) and/or applicable California or other U.S. state exhaust emission standards;

b. The emissions certification and compliance status of MY 2014-2016 Ram 1500 and Jeep Grand Cherokee vehicles equipped with Ecodiesel engines sold or intended for sale in the United States and identified in Paragraphs 73 and 74 of the United States’ May 23, 2017 complaint (the “Affected Vehicles”);

c. The development, manufacture, and sales of the emissions-related diagnostic and control systems, including the electronic control modules (“Emissions Control Systems”) employed in the Affected Vehicles;

d. Testing, calibration or evaluation of the Emissions Control Systems in the Affected Vehicles;

e. The applications for, or U.S. federal or state agency action with respect to, the federal or state emissions certifications for the Affected Vehicles, or the compliance of the Emissions Control Systems of the Affected Vehicles with emissions regulations in the United States;

f. Communications regarding the Emissions Control Systems installed in the Affected Vehicles with or by the following: the EPA, the California Air Resources Board, other

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<sup>1</sup> The inclusion of these topics is not intended to suggest that every Party possesses Potentially Relevant Information concerning all topics in this Paragraph. Likewise, the inclusion of these topics is not intended to suggest that steps beyond those required by applicable law, including the Federal Rules of Civil Procedure, must be taken to Preserve any such Potentially Relevant Information.

governmental or regulatory authorities (whether or not in the U.S.), any entity or institution testing or verifying the performance of the Affected Vehicles, consumers, trade organizations, auto dealerships, other Defendants, and any other non-Party vendors or contractors;

g. Testing or rating of fuel efficiency or performance, such as horsepower, torque and acceleration, of the Affected Vehicles;

h. Effect the Emissions Control Systems have on the fuel economy or the performance of the Affected Vehicles, if any;

i. Economic benefit or savings, if any, derived from any non-compliance associated with the use of the Emissions Control Systems in the Affected Vehicles, including any alleged violations of the Clean Air Act;

j. Data, research or analysis about the environmental or health impact, if any, due to the use of the Emissions Control Systems installed in the Affected Vehicles;

k. Data, research or analysis regarding exhaust emissions from Affected Vehicles;

l. Remedial actions, service actions, and recalls about the Emissions Control Systems of the Affected Vehicles;

m. Awareness of and discussions regarding U.S. attainment or non-attainment areas under the Clean Air Act as it relates to sales of Affected Vehicles in those regions;

n. Awareness of and discussions regarding the compliance or noncompliance of Affected Vehicles and Emissions Control Systems with Title II of the Clean Air Act and its implementing regulations, or analogous state statutes and regulations;

o. Marketing and advertising campaigns for the Affected Vehicles;

p. Sales data reflecting how many of each Affected Vehicle has been sold in each geographic region, major city and/or zip code;

q. Vehicle registration data or analyses reflecting how many of each Affected Vehicle were registered in each geographic region, major city and/or zip code;

r. The sale, lease, or other disposition, or attempted sale, lease, or other disposition, of an Affected Vehicle by or to any plaintiff named in the Consolidated Complaint;

1 s. Any valuation by any plaintiff named in the Consolidated Complaint of any  
2 Affected Vehicle;

3 t. Statements or other representations about the Affected Vehicles that were  
4 allegedly relied upon by any plaintiff named in the Consolidated Complaint;

5 u. The use of any Affected Vehicle by any plaintiff named in the  
6 Consolidated Complaint;

7 v. Servicing, maintenance and repairs performed by any plaintiff named in the  
8 Consolidated Complaint on any Affected Vehicle;

9 w. The condition, including any modification or change in condition, of any  
10 Affected Vehicle during its ownership and/or possession by any plaintiff named in the  
11 Consolidated Complaint;

12 x. Communications, including those posted on any website or social media,  
13 by any plaintiff named in the Consolidated Complaint regarding any Affected Vehicle;

14 y. Out-of-pocket expenses claimed by any plaintiff named in the Consolidated  
15 Complaint;

16 z. The acquisition, lease or sale by any plaintiff named in the Consolidated  
17 Complaint of any Affected Vehicles or vehicles that compete with any Affected Vehicles;

18 aa. Inventory records, financial records, and marketing and advertising records  
19 of any non-consumer plaintiff named in the Consolidated Complaint of any Affected Vehicles or  
20 vehicles that compete with any Affected Vehicles;

21 bb. Any claims or defenses associated with the United States' May 23, 2017  
22 complaint, and associated relief;

23 cc. Any of the civil penalty factors set forth in 42 U.S.C. § 7524(b); and

24 dd. Emissions-related testing of any Affected Vehicle by any non-Party,  
25 including the Center for Alternative Fuels, Engines and Emissions.

26 5. "Preserve(d)" shall mean to take good faith, reasonable and proportional steps to  
27 retain Potentially Relevant Information (including, where applicable, potentially relevant  
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document metadata) in the Party's possession, custody or control. The steps should focus on retaining unique copies of Potentially Relevant Information.

### **REQUIREMENTS**

6. This Order applies to Potentially Relevant Information as defined in Paragraph 4. Nothing herein shall be construed as impacting, changing, altering, or obviating the Parties' obligation to preserve tangible items other than Information, nor shall anything in this Order be construed as impacting or obviating the Parties' obligation to comply with orders or duties relating to the preservation of evidence in other cases or investigations. Additionally, nothing herein shall be construed to expand the preservation obligations of the Parties beyond the requirements of applicable law, including the Federal Rules of Civil Procedure.

7. The Parties have met and conferred, and will continue to meet and confer, regarding preservation issues consistent with their obligations under the Federal Rules of Civil Procedure and the Northern District of California's Guidelines for the Discovery of Electronically Stored Information.

8. Given the varying approaches used by the Parties to manage Information (including the management of ESI), it is not practical at this point to delineate a single detailed process that all Parties must follow to Preserve Potentially Relevant Information. The Court will permit a Party to select and use its own method to Preserve Potentially Relevant Information, so long as the method enables the Party to meet its obligations under applicable law, including the Federal Rules of Civil Procedure. In the event that questions arise among the Parties as to whether or how Information should be Preserved under this Order, counsel for the Parties shall meet and confer. If the Parties are unable to agree, they may apply to this Court for clarification or relief from this Order upon reasonable notice. Before any Party files any motion regarding the terms of this Order or compliance with this Order, counsel for that Party shall meet and confer in a good faith attempt to resolve the dispute.

9. During the pendency of the Parties' discussions pursuant to Paragraph 7, no Party shall be relieved from retaining Potentially Relevant Information segregated or otherwise preserved pursuant to preservation measures that it implemented pursuant to applicable law.

1           10.     The United States contends that the ESI identified in subparagraphs 10.a. through  
2 10.k. is not reasonably accessible to the United States in this litigation and, as such, the United  
3 States has informed the Parties that the United States will not preserve such ESI:

4           a.     Data stored in a backup system for the purposes of system recovery or  
5 information restoration, including but not limited to, disaster recovery backup tapes, continuity of  
6 operations systems, and data or system mirrors or shadows, if such data are routinely deleted or  
7 written over in accordance with an established routine system maintenance practice;

8           b.     Voicemail messages;

9           c.     Electronic mail sent to or from a personal digital assistant ("PDA"),  
10 smartphone (e.g. Blackberry, iPhone), or tablet (e.g. iPad), provided that a copy of such email is  
11 routinely saved elsewhere;

12           d.     Other electronic data stored on a PDA, smartphone, or tablet, such as  
13 calendar or contact data notes, provided that a copy of such information is routinely saved  
14 elsewhere;

15           e.     Logs of calls made from cellular phones;

16           f.     Deleted computer files, whether fragmented or whole (nothing in this order  
17 authorizes the intentional deletion of ESI after the duty arose to preserve such ESI);

18           g.     Data stored on photocopiers, scanners, and fax machines;

19           h.     Server, system, or network logs;

20           i.     Data stored on legacy systems that were no longer in use five years before  
21 the complaint was filed;

22           j.     Instant messages, such as messages sent on AOL Instant Messenger or  
23 Microsoft Communicator; and

24           k.     Text messages, such as cell phone to cell phone SMS messages.

25 Defendants contend that they do not have information sufficient to determine whether the above-  
26 referenced ESI is reasonably accessible to the United States and therefore reserve all rights with  
27 respect to any decision by the United States not to preserve such ESI. All Parties reserve their  
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1 rights as to whether any sources of ESI, including but not limited to ESI listed in subparagraphs  
2 10.a. through 10.k., should be preserved.

3 11. By Preserving Potentially Relevant Information, no Party concedes that such  
4 material is discoverable in this matter, nor does any Party waive any claim of privilege or other  
5 protection by so Preserving.

6 12. Nothing in this Order shall preclude the Parties from seeking relief from the  
7 Preservation obligations imposed by this Order, nor shall anything in this Order preclude or  
8 require the Parties to seek clarification of any Preservation obligations imposed by this Order;  
9 however, prior to seeking any such relief from the Court, counsel shall meet and confer amongst  
10 themselves in a good-faith effort to reach agreement.

11 13. Nothing in this Order shall affect any other obligations of the Parties to Preserve  
12 Potentially Relevant Information for purposes other than claims brought or defenses asserted in  
13 this MDL, such as pursuant to court order, administrative order, subpoena, statute, or in response  
14 to other anticipated litigation.

15 **IT IS SO ORDERED.**

16 Dated: August 8, 2017

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THE HONORABLE EDWARD M. CHEN  
United States District Judge